

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff.

| NO. CR17-0233JLR

PROTECTIVE ORDER

JESUS RODRIGUEZ PAYAN,
Defendant.

This matter, having come to the Court's attention on the parties' joint motion for entry of a discovery protective order, and the Court, having considered the motion, and being fully advised in this matter, hereby enters the following PROTECTIVE ORDER:

1. **Protected Material.** For purposes of this Order, “Protected Materials” shall include (1) Grand Jury testimony; (2) financial information and other personal identifying information (“PII”)¹ obtained during the investigation, either via Grand Jury subpoena and/or during the execution of search warrants; (3) other personal information

¹ "PII" includes, but is not necessarily limited to, the information identified in Fed. R. Crim. P. 49.1(a) and includes full names, dates of birth, Social Security numbers (or other identification information), financial account information (including account numbers), tax information, driver's license numbers, addresses, telephone numbers, locations of residences or employment, medical records, school records, juvenile criminal records, and other confidential information. The government has endeavored to redact PII as appropriate, but the parties acknowledge and agree that this will not always be possible, and that in some instances un-redacted PII may be necessary to the defense.

1 about defendants and third parties, including but not limited to photographs (including
2 sexually suggestive photographs of family members, defendants and/or witnesses) and
3 other sensitive information obtained from the search of social media, cellular telephones
4 and other digital devices seized during the investigation (collectively, the “Protected
5 Material”). All cellular telephone downloads, financial records, and summaries of
6 financial records provided during discovery will be considered Protected Material
7 without further designation by the Government. Other information believed by the
8 Government to be Protected Material will be so designated by the Government.

9 **2. Production of Protected Material to the Defense.** The United States will
10 make available copies of the Protected Materials, including those filed under seal, to
11 defense counsel to comply with the government’s discovery obligations. Possession of
12 copies of the Protected Materials is limited to the attorney of record, and investigators,
13 paralegals, law clerks, experts and assistants for the attorney of record (hereinafter
14 collectively referred to as “members of the defense team”). Further, the attorney of
15 record is required, prior to disseminating any copies of the Protected or Sensitive
16 Materials to members of the defense teams, to provide a copy of this Protective Order to
17 members of the defense team.

18 **3. Review of Protected Material by Defendants.** The attorneys of record
19 and members of the Defendant’s defense team may share and review the Protected
20 Material with the Defendant. Defendant, who is residing at the Federal Detention Center
21 (FDC) will be permitted to review the Protected Material, consistent with the regulations
22 established by the BOP, with their counsel in a controlled environment at the Federal
23 Detention Center (FDC), but will be prohibited from printing out, copying, or
24 disseminating the discovery.

25 **4. Limits on Dissemination of Protected Materials.** The attorney of record
26 and members of the defense team acknowledge that providing copies of the Protected
27 Material to the Defendant and other persons is prohibited, and agree not to duplicate or
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1 provide copies of the Protected Material to the Defendant and other persons. This order
2 does not limit employees of the United States Attorney's Office for the Western District
3 of Washington from disclosing the Protected Material to members of the United States
4 Attorney's Office, federal law enforcement agencies, and to the Court and defense as
5 necessary to comply with the government's discovery obligations.

6 **5. Future Production of Additional Protected Materials.** Additional types
7 of discovery items may be deemed by the parties to constitute Protected Material upon
8 agreement, or (if no agreement can be reached) by further order of the Court.

9 **6. No Waiver.** Nothing in this order should be construed as imposing any
10 substantive discovery obligations on the government that are different from those
11 imposed by case law and Rule 16 of the Federal Rules of Criminal Procedure. The
12 failure to designate any materials as provided in paragraph 2 shall not constitute a waiver
13 of a party's assertion that the materials are covered by this Protective Order.

14 **7. Use of Protected Material in Court.** Any Protected or Sensitive Material
15 that is filed with the Court in connection with pre-trial motions, trial, or other matter
16 before this Court, shall be filed under seal and shall remain sealed until otherwise ordered
17 by this Court. This does not entitle either party to seal their filings as a matter of course.
18 The parties are required to comply in all respects to the relevant local and federal rules of
19 criminal procedure pertaining to the sealing of court documents.

20 **8. Non-Termination.** The provisions of this Order shall not terminate at the
21 conclusion of this prosecution. Furthermore, at the close of this case, defense counsel
22 shall return the Protected Material, including all copies of the Protected Material, to the
23 office of the United States Attorney, or otherwise certify that the material has been
24 destroyed.

25 **9. Violation of Order.** Any person who willfully violates this order may be
26 held in contempt of court and may be subject to monetary or other sanctions as deemed
27 appropriate by this Court.

1 10. **Modification of Order.** Nothing in this Stipulation shall prevent any party
2 from seeking modification of this Protective Order or from objecting to discovery that it
3 believes to be otherwise improper. The parties agree that in the event that compliance
4 with this Order makes it difficult for defense counsel to adhere to their Sixth Amendment
5 obligations, or otherwise imposes an unworkable burden on counsel, defense counsel
6 shall bring any concerns about the terms of the Order to the attention of the government.
7 The parties shall then meet and confer with the intention of finding a mutually acceptable
8 solution. In the event that the parties cannot reach such a solution, defense counsel shall
9 have the right to bring any concerns about the scope or terms of the Order to the attention
10 of the Court by way of a motion.

11 11. **No Ruling on Discoverability or Admissibility.** This Protective Order
12 does not constitute a ruling on the question of whether any particular material is properly
13 discoverable or admissible and does not constitute any ruling on any potential objection
14 to the discoverability of any material.

15 12. **Addition of Defendants after Entry of Order.** This Protective Order will
16 cover additional Defendants in this case so long as they agree to be bound by the terms of
17 this Protective Order and so indicate that consent by the execution of a supplemental
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1 stipulation, which shall be filed as an addendum or supplement to this Protective Order.

2 The Clerk of the Court is directed to provide a filed copy of this Protective Order
3 to all counsel of record.

4 DATED this 18th day of April, 2019.

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The Honorable James L. Robart
U.S District Court Judge

Presented by:

s/ S. Kate Vaughan
S. KATE VAUGHAN
Assistant United States Attorney